

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8264 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? :

M N VADWALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8264 of 1993
MR PV HATHI for Petitioner No. 1
MR CHAUHAN, AGP for Respondents No. 1-2

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: / /2002

C.A.V. JUDGEMENT

1. M.N.Vadvala, petitioner has filed this petition with a prayer that this Court may declare that the petitioner is entitled to receive his gratuity amount on and from 1st February, 1991, and on from 1.2.1993 with interest at the rate of 15% p.a. He has further prayed

that this Court may declare that the action of the respondent No.1 State of Gujarat, through Secretary, Finance Department in not passing order of releasing gratuity amount on and from 1st February, 1993, is illegal, improper and unconstitutional and pay the same with 15% interest. The said petition was filed on 16th August, 1993.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner joined the Sales Tax Department in the former State of Bombay in 1957 as Inspector. He was promoted as Sales Tax Officer (Class-II) in 1969 and as Sales Tax Officer (Class-I) in April 1982 and was lastly promoted as Assistant Commissioner on 9th April, 1984 after rendering 34 years of service. He retired on 1st February, 1991.

2.2 It is a case of the petitioner that the State of Gujarat through Finance Department served a chargesheet on 5th December, 1988, after holding preliminary inquiry in the year 1984. The charge essentially levelled against him was that because of the defective assessment order in passing the assessment order in favour of M/s.Jayant Extraction Company as a Sales Tax Officer, Jamnagar in the year 1977, by which the Government was likely to suffer a loss of Rs.1,97,939/- and thereby had shown lack of integrity and thereby committed a grave misconduct within the meaning of Rule 3 of the Gujarat Civil Services (Conduct, Discipline and Appeal) Rules, 1971 (hereinafter referred to as 'the Discipline Rules').

2.3 The petitioner filed reply on 17th January 1989 and pointed out that he had merely followed the decision rendered by his higher officer on the same issue while passing the assessment order in the case of said M/s.Jayant Extraction Company, Jamnagar. The petitioner also pointed out to the said reply that he had rendered services on important enforcement posts in different towns and cities and at no point of time his honesty or integrity was doubted even by a whisper.

2.4 The inquiry officer came to be appointed by the department on 25th April, 1989, and the said inquiry officer did not proceed till he reached the age of superannuation on 1st February, 1991. But on 31st January 1991 a notification was issued by the first respondent permitting the petitioner to retire with effect from 31st January, 1991, with a proviso that the departmental inquiry instituted against the petitioner

shall be continued and concluded as if he was continued in Government service. By another of the same date, the department allowed him 100% pension on provisional basis and his gratuity amount was withheld till the issuance of further order by the Government. The Inquiry Officer has submitted his report on 11th February, 1992, and the same was communicated to the petitioner on 27th May, 1992.

2.5 The petitioner has thereafter filed detailed reply to the Government on 16th June, 1992. However, the departmental proceedings, though was over in the month of June 1992, no final orders are passed by the first respondent even though more than 14 months are passed.

2.6 He submitted that though his amount of gratuity is withheld by an order dated 31st January, 1991, when he was allowed to retire with 100% pension though paid on provisional basis. Accordingly his amount of Rs.50,000/is withheld by the Government on and from 1st February, 1991. He further submits that as per order dated 31.1.91, his full gratuity amount remains withheld. The period of two years, even assuming that the charge levelled against the petitioner is sustainable in law and assuming that the Government was justified in initiating such departmental proceedings in respect of the assessment order passed by the petitioner in 1977, the period of two years provided by the last resolution and therefore he is entitled to the release of his 90% gratuity amount as per Para 2(b) of the said resolution. However, no orders are passed till today though represented to the first respondent by the petitioner.

2.7 On merits of the matter, he submitted that the charge was levelled against the petitioner for the first time in the year 1988 in respect of the assessment order after full inquiry against M/s.Jayant Extraction Company, Jamnagar. The account books of the concerned dealer were examined on and from 19th October 1977 and a full and complete field work was completed on or about 30th December, 1977. He further submitted that he has passed the assessment order in favour of the dealer following the decision passed in appeal of his own superior officer of the earlier year of S.Y. 2027 passed in respect of the same issue and no new principle or order was made which could justify the department to assume that there was any kind of collusion with the dealer.

2.8 He submitted that it is no doubt true that the tribunal has decided in favour of the department by decision rendered in the matter of Shri Vallabh Glass Works by which the tribunal rejected the contention of

the dealer that handling charges and other charges for supply of packing materials was a service after sale is rejected and the tribunal held that these charges are includible in sale price. The said decision though came on 19.8.77 but the Government issued circular on 15.2.88 trying the attention to the Sales Tax Officer in this behalf. The petitioner therefore submitted that he has passed the order in favour of the dealer following the decision passed in appeal of his own superior officer in the year 1977 at that time he was not aware the judgment of Shri Vallabh Glass Works and, therefore, his action is bonafide exercise of power and legal and valid at the relevant time. In view of the same, it was stated that the petitioner has not committed any misconduct in this behalf.

3. Mr.P.V.Hathi, learned advocate for the petitioner has also pointed out the order dated 31st January, 1991, passed by the Government where the Government has withheld the amount of gratuity and not paid to the petitioner in this behalf.

3.1 In view of the aforesaid facts and circumstances of the case, learned advocate for the petitioner stated that in this case after the petitioner passed the order the revisional authority initiated suo-moto revision by name of Commissioner and ultimately the State Government has in fact recovered not only the said amount which the State Government is said to have lost because of the assessment order passed by the petitioner and the said amount is recovered with full with interest by the Government and the Government has in fact suffered no loss though. As submitted above, the dealer got the benefit of the said amount only because the petitioner followed the appellate judgment passed in the case of the same businessman in the earlier year of S.Y.2027.

3.2 Learned advocate for the petitioner submitted that when the petitioner has already followed the order of his superior officer in appeal for the early hearing, he has acted bonafidely and therefore there is no evidence nor any whisper of lack of integrity or of showing any favour to the dealer. No such evidence is led before the Inquiry Officer who has already submitted a report nor any such evidence or complaint was shown to the petitioner during the inquiry.

3.3 In view of the same it was submitted that the order of withholding the amount of gratuity is illegal and bad in law and this Court may direct the respondents authority to release the amount of gratuity on and from

1st February, 1993, to the petitioner.

3.4 Mr. Chauhan, the learned AGP appeared and tried to support the order of the Government in this behalf.

4. I have considered the facts and submissions made by the petitioner and I have also considered the facts of the Special Civil Application No.7655 of 1995 in which I have already given a judgment, allowing the petition of the petitioner herein. In view of the same, I am of the view that the petitioner who retired from service on 1st February, 1991 was denied payment of gratuity by order dated 31st January, 1991 and the entire amount of gratuity was withheld because of pendency of the departmental proceedings. However, under the statutory rules, 90% of the gratuity was required to be released on expiry of two years from the date of his retirement i.e., 1st February, 1993. Though the enquiry was over, no orders were passed in terms of the said statutory rules, and therefore, the present petition was filed on 17th August, 1993 and pursuant to the same, interim directions were issued by this Court granting payment of 90% of his gratuity amount, which came to be paid to him on 22nd September, 1993. The said interim order dated 18th August, 1993 reads as under:-

"Rule. By way of ad-interim relief, it is directed that the respondents will consider the question of payment of 90 per cent of gratuity to the petitioner in terms of the notification dated 15th January, 1993 at Annexure 'F' within four weeks from today and the amount as may be found payable, may be released within two weeks thereafter."

5. Pursuant to the above referred ad-interim order, the petitioner received 90% of the gratuity amount on 22nd September, 1993. Now, the amount of Rs.5000/- which was retained by the Department was released on 6th January, 1995, and accordingly, the petitioner received full gratuity amount. In view of the above position, the petitioner has prayed that if the petitioner is exonerated, he will be entitled to claim interest on the 90% amount paid to him on 22-9-1993 instead of on 1-2-1991 [i.e. the actual date of his retirement] at the rate of 15% p.a. on the amount of Rs.58,937/- [90% amount : from 1.2.1991 to 23.9.1993] and shall also be entitled to claim interest @ 15% p.a. on sum of Rs.5,000/- from 1.2.1991 to 6.1.1995. I have considered the case and I have already exonerated the petitioner in the other petition being Special Civil Application

No.7655 of 1995. Thus, the petitioner is entitled to draw interest on the amount which was paid to him belatedly. Accordingly, I hold that:

- (a) the petitioner has already exonerated by the judgment which I have given in Special Civil Application No.7655 of 1995 wherein I allowed the petition, the petitioner will be entitled to claim interest on the 90% amount paid to him on 22nd September, 1993, instead of on 1st February, 1991, (date of retirement). Therefore, he will be entitled to claim interest at the rate of 10% p.a. on Rs.58,937/- (90% amount) from 1.2.1991 to 23.9.1993.
- (b) As the Government has not complied with the statutory rule of making payment of 90% of the gratuity amount, the petitioner will be entitled to claim interest on Rs.58,937/- from 1.2.93 (date of payment) till 23.9.1993 the date on which he received the payment.
- (c) the petitioner shall also be entitled to to the cost of the petition.

6. In view of the aforesaid observations and directions, this petition is allowed to that extent and the order of respondent through Secretary, Finance Department, in not passing the order of releasing the gratuity from 1st February, 1993, is illegal, improper and liable to be set aside.

(K.M. Mehta, J.)

syed/